



Darcy L. Endo-Omoto  
Vice President  
Government & Community Affairs

October 31, 2008

The Honorable Chairman and Members of  
the Hawaii Public Utilities Commission  
465 South King Street  
Kekuanaoa Building, 1st Floor  
Honolulu, Hawaii 96813

Dear Commissioners:

Subject: Docket No. 2008-0083 - HECO 2009 Test Year Rate Case  
Stipulation for Protective Order

On October 2, 2008, Hawaiian Electric Company, Inc. ("HECO"), the Division of Consumer Advocacy, and the Department of Defense ("DOD") filed a Stipulation for Protective Order. The Commission staff subsequently directed parties to submit an explanation of material modifications to the standard protective order that the Commission issued on August 26, 2005. Attachment 1 provides explanations for material modifications in the proposed protective order for the HECO 2009 test year rate case, other than those that seem patently self-explanatory. Most of the modifications mirror those already included in the protective orders for the HECO 2007 test year rate case and other proceedings.

Very truly yours,

CONCURRED:

Catherine P. Awakuni  
Division of Consumer Advocacy

\_\_\_\_\_  
Gayle B. Chestnut, Esq.  
Department of Defense

Attachment

c: Division of Consumer Advocacy  
Dr. Kay Davoodi  
Gayle B. Chestnut, Esq.

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COMMISSION

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DOCKET NO. 2008-0083  
HECO 2009 TEST YEAR RATE CASE  
DIFFERENCES BETWEEN PROPOSED PROTECTIVE ORDER AND  
COMMISSION'S AUGUST 26, 2005 STANDARD PROTECTIVE ORDER

1. Paragraph 2, page 3

*All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party or participant under the provisions of this protective order to the extent allowed by the Commission. If the Commission designates a person as a qualified person pursuant to paragraph 12.h. below, that person shall comply with the provisions of this protective order, including executing a Protective Agreement.*

Purpose:

Language was inserted to clarify obligations of a person designated as a qualified person by order of the Commission.

2. Paragraph 4, page 4

*Any party may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, financial, vendor, or bid information, or nonpublic information, "critical infrastructure information" that should not be disclosed publicly under the Homeland Security Act of 2002, and/or information that is related to the security of the Applicant's facilities, that if disclosed publicly, could increase risk to the Applicant's facilities, jeopardize their emergency and disaster preparedness plans, and/or adversely impact its ability to respond to potential terrorist threats.*

Purpose:

Language was inserted to allow parties to designate as confidential information related to security of the Applicant's facilities.

3. Paragraph 10, pages 6-7

*Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or impermissible disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in paragraph 8 above. The protections conferred herein shall apply to any confidential information voluntarily produced prior to the issuance of this protective order, provided that following the issuance of this protective order (1) the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable*

*harm to the producing party from any misuse or unpermitted disclosure of the information, and (2) the party claiming confidentiality ensures that the confidential information voluntarily produced prior to the issuance of this protective order contains the designation as required in paragraph 9 above.*

Purpose:

Language clarifies treatment of confidential information previously produced but not designated as confidential.

4. Paragraph 12.e., page 7

*DOD, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by DOD for this proceeding;*

Purpose:

Language includes DOD and specified DOD-related personnel as qualified persons.

5. Paragraph 17, pages 9-10

*Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party or its affiliates, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.*

*Any confidential information obtained under this protective order may be used by the DOD, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party or its affiliates, or where the intended use of such confidential information is for the purpose of assisting the DOD in fulfilling its statutory duties and responsibilities with respect to the producing party or its affiliates. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.*

Purpose:

Language was included to subject DOD to the same provisions regarding use of confidential information as the Consumer Advocate.

6. Paragraphs 29-30, pages 13-14

*Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. Counsel and the*

representatives of record for a party shall preserve the confidentiality of this information in accordance with the terms of this protective order for as long as they retain the confidential information.

Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate, and counsel for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives, and may remain in the possession of DOD and its counsel for the same period of time. Such parties shall preserve the confidentiality of this information in accordance with the terms of this protective order for as long as they retain the confidential information.

Purpose:

Language was inserted at the request of Siemens Power Generation, Inc. ("Siemens") to allow the disclosure of Siemens proprietary information under this protective order in lieu of developing a separate third-party non-disclosure agreement for this information. See HECO's response to CA-IR-63.

7. Paragraph 32, page 14

This Stipulation for Protective Order may be executed by the parties in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The parties may execute this Stipulation for Protective Order by facsimile for initial submission to the Commission to be followed by the filing of originals of said facsimile pages.

Purpose:

Language allows parties to execute the stipulation by facsimile for initial submission to the Commission.